

HOUSE BILL 22

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 32; Title 49, Chapter 7 and Title 50, relative to expunged offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) An institution of higher education shall not, in any application, interview, or otherwise:

(1) Require an applicant for admission to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged; or

(2) Knowingly inquire about any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(b) An applicant is not required, in response to any question concerning any arrest or criminal charge that has not resulted in a conviction, to include a reference to or information concerning an arrest, criminal charge, or criminal conviction that has been expunged.

(c) Nothing in this section shall create a private right of action against an institution of higher education or the institution's agents or employees.

(d) As used in this section, "institution of higher education":

(1) Means any postsecondary institution in this state that offers courses of instruction leading to a certificate or degree; and

(2) Includes any college, university, community college, or state college of applied technology, whether public or private.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) An employer shall not, in any application, interview, or otherwise:

(1) Require an applicant for employment to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged;

(2) Knowingly inquire about any arrest, criminal charge, or criminal conviction of the applicant that has been expunged; or

(3) Deny an application solely because of an applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(b) An applicant is not required, in response to any question concerning any arrest or criminal charge that has not resulted in a conviction, to include a reference to or information concerning an arrest, criminal charge, or criminal conviction that has been expunged.

(c) A public employer shall advise an applicant that state law:

(1) Allows the applicant to not refer to any arrest, criminal charge, or criminal conviction that has been expunged;

(2) Does not require the applicant, in response to any question concerning any arrest or criminal charge that has not resulted in a conviction, to include a reference to or information concerning an arrest, criminal charge, or criminal conviction that has been expunged; and

(3) Does not allow an application to be denied solely because of an applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

(d)

(1)

(A) If any person has reason to believe that a private employer has violated subsection (a), the person may file a complaint with the department of labor and workforce development.

(B) Upon receipt of a complaint, the commissioner of labor and workforce development shall conduct an investigation.

(C) If there is substantial evidence that a private employer violated subsection (a), the commissioner shall conduct a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, on the question of whether the private employer violated subsection (a).

(2)

(A) A private employer knowingly violating subsection (a) is subject to a civil penalty of not less than five hundred dollars (\$500) at the discretion of the commissioner or the commissioner's designated representative; provided, a private employer shall be issued a written warning in lieu of a civil penalty for a first violation.

(B) In determining the amount of the penalty, the appropriateness of the penalty to the size of the private employer's business, the gravity of the violation, the good faith of the private employer, and the record of previous violations shall be considered.

(C) Each violation of subsection (a) by a private employer constitutes a separate offense.

(e) Nothing in this section shall create a private right of action against an employer or the employer's agents or employees.

(f) As used in this section:

(1) "Applicant" means an individual who has applied for employment with an employer;

(2) "Employer":

(A) Means a person or entity that employs one (1) or more employees; and

(B) Includes:

(i) A public employer; and

(ii) A private employer; and

(3) "Public employer" means the state of Tennessee, its departments and agencies, and the political subdivisions of the state and their departments and agencies.

SECTION 3. This act shall take effect July 1, 2015, the public welfare requiring it, and shall apply to violations occurring on or after that date.